

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA**

**CENTER FOR INDIVIDUAL  
FREEDOM, INC.,**

**Plaintiff,**

**V.**

**NATALIE E. TENNANT, *et al.*,**

**Defendants.**

**Case No. 1:08-00190**

**NOTICE OF NEWLY DISCOVERED AUTHORITY  
SUPPORTING THE CENTER’S RESPONSE  
TO THE STATE DEFENDANTS’ MOTION TO FILE NEW EXHIBIT**

The Center for Individual Freedom respectfully gives notice of newly discovered authority, *Harrell v. Florida Bar*, No. 09-11910, 2010 WL 2403344 (11th Cir. June 17, 2010), relevant to Defendants’ assertion that a recent resolution by the West Virginia State Election Commission that it did not intend to “investigate or enforce those provisions . . . that have been repealed, deleted, or effectively repealed by the passage of House Bill 4647” establishes mootness. The lengthy *Harrell* opinion is readily available on Westlaw, Pacer, and other Internet sources. Accordingly, only Section IV of the opinion is attached. Quotations below are from that section.

Lawyer Harrell sued the Florida Bar asserting, among other things, that he was constitutionally entitled to use the phrase “Don’t settle for less than you deserve” in advertising his law firm. While suit was pending, the Bar voted to declare the slogan to be permissible and then asserted that aspect of the case was moot. The district court agreed, but the court of appeals reversed.

The court of appeals recognized a “rebuttable presumption” that “unambiguous termination” by “governmental actors” may establish mootness, but ruled that the “timing and content” of the action are important. *Id.* at \*19-20. A governmental “cessation that occurs late in the game will make a court more skeptical of voluntary changes.” *Id.* at \*20 (internal quotations omitted). Skepticism is enhanced if the action is either “clandestine or irregular.” *Id.* It is further enhanced if there is no “well-reasoned justification for the cessation as evidence that the ceasing party intends to hold steady in its revised (and presumably unobjectionable) course.” *Id.*

The Florida Bar had acted after suit was filed; its vote occurred “behind closed doors and, notably, fail[ed] to disclose any basis for its decision.” *Id.* at \*21. The Board procedures did not clearly authorize the declaration. *Id.* Accordingly, it was not “*absolutely clear*” that the allegedly wrongful behavior could not reasonably be expected to recur and the issue was not moot. *Id.* at \*22 (emphasis in original).

The Center for Individual Freedom requests that the new decision be taken into consideration in connection with its “Response of the Center for Individual Freedom to the State Defendants’ Motion to File New Exhibit to Their ‘Motion’ to Dismiss As Moot” (Dkt. 202), which advanced similar arguments with respect to the resolution of the West Virginia State Election Commission.

July 15, 2010

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**CERTIFICATE OF SERVICE**

I certify that on July 15, 2010, I electronically filed the foregoing “NOTICE OF NEWLY DISCOVERED AUTHORITY SUPPORTING THE CENTER’S RESPONSE TO THE STATE DEFENDANTS’ MOTION TO FILE NEW EXHIBIT” using the CM/ECF system, which will notify the following CM/ECF participants:

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